

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/23/2022

MEMORANDUM ENDORSEMENT

Feliz v. Westchester Department of Corrections (Valhalla), No. 7:20-cv-6392 (NSR)

The Court has reviewed the motion to dismiss filed by Defendant Dr. Richard Magill (“Defendant”) seeking to dismiss *pro se* Plaintiff Hiram Alberto Feliz (“Plaintiff”)’s Second Amended Complaint pursuant to Federal Rule of Civil Procedure 12(c). (ECF Nos. 14–17.)

Defendant’s motion to dismiss is DENIED without prejudice for failure to follow the Court’s Individual Practices in Civil Cases. *See* Sec. 3.A.ii. Defendant should have first filed a premotion conference letter seeking leave from the Court to file a motion to dismiss. Defendant’s failure to do so has resulted in a lack of briefing schedule set by the Court. The Court hereby sets a formal briefing schedule in order to afford *pro se* Plaintiff the opportunity to oppose such motion.

Accordingly, the Court hereby waives the pre-motion conference requirement and grants Defendant Dr. Macgill leave to file a motion to dismiss in accordance with the following schedule:

- (1) Defendant’s moving papers are to be served (not filed) on September 2, 2022;
- (2) Plaintiff’s opposition papers are to be served (not filed) on October 3, 2022; and
- (3) Defendant’s reply papers are to be served on October 18, 2022.


All motion papers are to be filed by Defendant Dr. Macgill (including Defendant’s prior filed moving papers and also *pro se* Plaintiff’s opposition papers) on the reply date, October 18, 2022. The parties are directed to provide Chambers with two physical courtesy copies of their motion papers on the same date they are served on opposing counsel. The parties are further directed to provide the Court with an electronic courtesy copy of the motion papers as they are served per this Court’s local emergency civil rules.

The Clerk of Court is respectfully directed to terminate the motion at ECF No. 14. The Clerk of Court is further directed to mail a copy of this Memorandum Endorsement to *pro se* Plaintiff at his address listed on ECF and to show service on the docket.

DATED: August 23, 2022

White Plains, NY

SO ORDERED:



HON. NELSON S. ROMAN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

HIRAM ALBERTO FELIZ,

20-CV-6392 (NSR)

Plaintiff,

NOTICE OF MOTION

-against-

DR. MAGILL AND DR. ULLOA,

Defendants.

PLEASE TAKE NOTICE, that upon the annexed Declaration of William H. Bave, Jr., Esq., dated the 5th of November, 2021, with the exhibits annexed thereto, along with the accompanying Memorandum of Law of William H. Bave, Jr., Esq., dated the 5th day of November, 2021, and upon all pleadings and proceedings heretofore had and held herein, the undersigned will move this Court on behalf of the defendant, RICHARD MAGILL, M.D., before the Honorable Nelson S. Roman, United States District Judge, at the United States Courthouse for the Southern District of New York, located at 300 Quarropas Street, White Plains, New York, for an order pursuant to Rule 12(c) of the Federal Rules of Civil Procedure for judgment dismissing the complaint as asserted against this defendant on the ground that the Eighth Amendment claim fails to state a claim upon which relief can be granted and for such other, further and different relief as this Court may deem just and proper.

Dated: White Plains, New York
November 5, 2021

Yours, etc.,

WILSON, BAVE, CONBOY, COZZA
& COUZENS, P.C.


By: WILLIAM H. BAVE, JR., ESQ.

Attorneys for Defendant

RICHARD MAGILL M.D. s/h/a DR. MAGILL

707 Westchester Avenue, Suite 213

White Plains, NY 10604

(914) 686-9010

To: HIRAM ALBERTO FELIZ
Plaintiff pro se
00002258094
Valhalla (WCDOC)
10 Woods Road
Valhalla, NY 10595